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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,981	01/13/2006	Cynthia C. Bamdad	13150-70090US	4121
7590	09/27/2011		EXAMINER	
Jhk Law P.o. box 1078 La Canada, 91012-1078 CANADA			MCDOWELL, BRIAN E	
			ART UNIT	PAPER NUMBER
			1624	
			MAIL DATE	DELIVERY MODE
			09/27/2011	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/564,981	BAMDAD, CYNTHIA C.	
	<b>Examiner</b>	<b>Art Unit</b>	
	BRIAN McDOWELL	1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 8/11/2011.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 5) Claim(s) 1-23 is/are pending in the application.
  - 5a) Of the above claim(s) 1-16,23 is/are withdrawn from consideration.
- 6) Claim(s) \_\_\_\_\_ is/are allowed.
- 7) Claim(s) 17-22 is/are rejected.
- 8) Claim(s) \_\_\_\_\_ is/are objected to.
- 9) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 10) The specification is objected to by the Examiner.
- 11) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/6/2011</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 8/11/2011 has been entered.

***Status of Claims***

Claims 1-23 are pending in the instant application. Claims 1-16 and 23 are withdrawn. Claims 17-22 are under examination.

***Information Disclosure Statement***

The examiner has considered the information disclosure statement filed 1/6/2011.

***Previous Objections/Rejections***

*Any rejections or objections stated of record in the office action mailed on 8/13/2010 that are not explicitly addressed herein below, are hereby withdrawn in light of applicant's arguments and/or amendments filed 8/11/2011.*

***Status of Specification***

**The objection of the specification is maintained.**

Applicant's response to the objection of the specification has been noted.

The objection is maintained for the reasons of record.

***Status of Rejections***

***35 USC § 102***

**The 102 rejection of claims 17-22 is maintained.**

Applicant's arguments and amendments, see Remarks, filed 8/11/2011, with respect to the Final Office Action mailed 8/13/2010, have been considered but are not found persuasive. Applicants request that the examiner clarify his statements regarding the relationship of the instant application with the Bamded document. The examiner inadvertently stated that the claimed subject matter does not find support within previously filed applications 09/996069, 10/236863, and 10/237,150. After careful examination, the instant application as filed is not related to any of the aforementioned applications. The examiner would like to point Applicant's attention to an excerpt of US 2008/0064680 (US publication of the instant application):

<b>(2) Patent Application Publication</b>		<b>(3) Pub. No.: US 2008/0064680 A1</b>
<b>Bamdad</b>		<b>(4) Pub. Date: Mar. 13, 2008</b>
<b>(5) METHODS FOR DIAGNOSIS AND TREATMENT OF CANCER</b>		<b>Related U.S. Application Data</b>
		<b>(6) Provisional application No. 60/610,838, filed on Sep. 14, 2004.</b>
<b>(7) Inventor:</b>	Cynthia C. Bamdad, Boston, MA (US)	<b>Publication Classification</b>
<b>Correspondence Address:</b> Jdk Law P.O. Box 3878 16 Canada St #12-1078		<b>(8) Int. CL.</b>
		<b>A61K 31/317</b> (2006.01) <b>A61K 31/311</b> (2006.01) <b>A61K 31/337</b> (2006.01) <b>A61F 35/00</b> (2006.01) <b>G01N 31/83</b> (2006.01) <b>A61K 31/35</b> (2006.01) <b>A61K 31/396</b> (2006.01)
<b>(9) Appl. No.:</b>	<b>10/864,881</b>	<b>(10) U.S. CL.</b>
<b>(11) PCT Filed:</b>	<b>Sep. 14, 2005</b>	<b>814212.0; 41573.1; 514253.1;</b> <b>514254.1; 514266.3; 514292; 514293</b>

which clearly states that the instant application is a national stage entry of PCT/US05/32821 and claims priority to provisional application 60/610038, filed 9/14/2004. Thus, the instant claims received the effective priority date of 9/14/2004. The Bamdad document was published 7/10/2003 and serves as prior art under 102(b) (i.e., "statutory bar"). Thus, the instant claims are appropriately rejected.

### **New Rejections**

#### ***Claim Rejections - 35 USC § 112 (2<sup>nd</sup> Paragraph)***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 cites that substituents “M<sub>1</sub>- M<sub>4</sub>” may be “*higher aryls*”. This term is not recognized by those skilled in the art and there is no guidance in the disclosure as to ascertain this definition. Which specific aryl groups are intended to be encompassed by this definition and which ones are excluded (e.g. naphthalenes, anthracenes, or more complex fused systems)? Thus, claim 17 and its dependent claims which do not rectify the issue are indefinite.

### ***Conclusion***

No claims are allowed.

This is a continuation of applicant's earlier Application No. 10/564981. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

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calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN MCDOWELL whose telephone number is (571)270-5755. The examiner can normally be reached on Monday-Thursday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson can be reached 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRIAN MCDOWELL/  
Examiner, Art Unit 1624